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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL, 1998

BEFORE

THE HON'BLE MR.JUSTICE A M FAROOQ

W P NO.36073-76/1993

Between:

Guddappa Ningappa Tahsildar
since deceased represented by
LRs.

1. Mariyappa
s/o Guddappa Tahsildar
aged 60 years,
r/o Ranebennur
Dharwad District

2. Cholappa
s/o Guddappa Tahsildar
aged 55 years,
R/o Ranebennur
District Dharwad.

Petitioners

(By Sri Madamohan M Kannur - Advocate)

And:

1. The state of Karnataka
by its Secretary
Revenue Department
Vidhana Soudha
Bangalore.

2. The Assistant Commissioner
Dharwad Sub-division,
Dharwad.

3. The Tahsildar
Ranebennur Taluk
Ranebennur.



4. Vadiraj Narayan Naik
Halageri, Major,
Occ: KSRTC Employee
r/o Hubli
Dharwad District.
5. Vaman Narayan Naik
Halageri, Major,
Occ: Officer, Vijaya Bank
r/o Hubli,
Dharwad District.
6. Madhav Narayan Naik
Halageri, Major,
Occ: Clerk, working in
KEB Department
Haveri, Haveri District.
7. Raghavendra Narayan Naik
Halageri, Major,
Occ: Private employment
r/o Bangalore.

All are represented by their
power of attorney holder -
Venkatesh Narayan Naik
Halageri, Major,
Occ: Agriculture
r/o Ranebennur
Ranebennur Taluk
Haveri District.

Respondents

(By Sri F V Patil - Adv for R4 to 7
Sri S S Guttal - HCGP for R1 to R3)

Writ petition is filed under Articles 226 &
227 of the Constitution of India praying to quash
Annexure-D dated 20/9/1993 passed by respondent
No.3.

This writ petition coming on for hearing
before the Court today, Court made the following:

ORDER

In these writ petitions, the petitioners have
prayed for quashing of the order passed by the
Tahsildar, dated 20/9/1993 and for issue of a writ



of mandamus directing the respondents to consider the application filed by the petitioners for regularisation of their unauthorised occupation of the lands in question. The lands in question admittedly belong to the impleading applicants. According to the petitioners, their father was a tenant in respect of those lands and they have continued to be in possession of the lands. Admittedly, the petitioners have not filed any application before the Tahsildar for regularisation of their unauthorised occupancy. On their application, the Tahsildar passed an order dated 20/9/1993 holding that the lands in question are tenanted lands and they vest with the State and against the said order, some of the impleading applicants filed W P No.36521/93 and the petitioners filed these writ petitions. WP No.36521/93 was taken up for hearing on 11/9/1997 and this Court allowed the writ petition and set aside the order passed by the Tahsildar and a copy of which is produced in these writ petitions as per annexure-J. Even though it is mentioned in the copy of the order passed in W P No.36521/93 that the order quashed is dated 29/9/1993, it is not disputed by the parties that it is the same order produced by the petitioners in these writ petitions



as per Annexure-D. In the said writ petition, it was held by this Court that the Tahsildar had no jurisdiction to declare the land to be tenanted land. Therefore, the first prayer made by the petitioners need not be considered in view of the order already passed by this court quashing Annexure-D.

2. The second prayer of the petitioner is for a writ of mandamus directing the respondents to consider their applications filed before the Tahsildar for regularisation of their unauthorised occupancy. It is submitted on behalf of the petitioners that the lands in question are tenanted lands and on coming into force of the amended Land Reforms Act, the lands vest with the Government and since the petitioners are in continuous possession of the land, their possession should be treated as unauthorised occupation and under the provisions of Section 94-A of the Karnataka Land Revenue Act, their possession is entitled to be regularised. According to the petitioners, when the lands are vested with the Government on coming into force of the Land Reforms Act, the lands should be deemed to be Government lands and therefore, they are entitled to seek regularisation of their unauthorised occupation.



3. In this writ petition, the petitioners have not made impleading applicants as respondents. There is no dispute that the impleading applicants are the owners of the lands. The petitioners are seeking regularisation of those lands on the ground that ^{the lands} they vested with the State. Admittedly till today there is no order of a Competent Authority declaring the land to be tenanted land. In view of the same, the petitioners ought to have ~~been~~ impleaded the owners of the land and in the interest of justice, I am of the view that the impleading applicants are not only ~~the~~ proper but necessary parties to be impleaded in these writ petitions. The impleading application is, therefore allowed and the impleading applicants are made as respondents 4 to 7.

4. When there is no declaration till today from the Land Reforms Tribunal, who is the competent authority to declare a land as tenanted land, it has to be presumed that the land in question has not vested with the State. The petitioners themselves have produced the record of rights in respect of the lands. The record of rights disclose that the lands have been cultivated by the owners themselves. However, it is contended by the

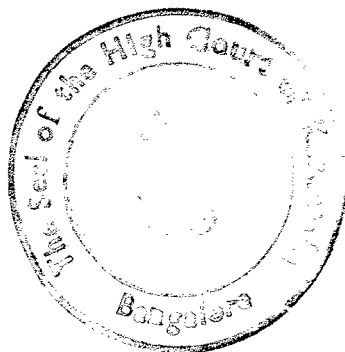
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petitioners that in respect of the entries in the record of rights showing the owners as cultivators, ^{payable to the petitioners and} in fact it were the petitioners, who have been cultivating the land. Under Section 133 of the Land Revenue act, there is a presumption in respect of entries in the record of rights. As long as there is no rebuttal evidence adduced by the petitioners, it has to be presumed that the entries found in the record of rights do show the true state of affairs. Therefore, at this stage, it cannot be said that the petitioners have been in possession of the lands in question. When there is no declaration as stated earlier that the lands are tenanted lands, the petitioners cannot seek regularisation of ^{also} private lands. The second prayer of the petitioner[^] cannot be allowed.

5. There is no merit in this writ petition. It is accordingly dismissed.

akd*



Sd/-
JUDGE